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In re Application of : DECISION ON  
Ian P. Murray :  
Application No.: 10/544,091 :  
PCT No.: PCT/US2004/002497 :  
Int. Filing Date: 29 January 2004 : RENEWED PETITION  
Priority Date: 31 January 2003 :  
Attorney's Docket No.: 103376.0005 : UNDER  
  
For: MULTI-AXIAL POSITIONING... :  
CONTAINER : 37 CFR 1.47(b) and 1.137(b)

This decision is in response to applicant's "STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF EXECUTING INVENTOR," which is being treated as a petition under 37 CFR 1.47(b) and a Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b) submitted on 21 July 2008 that seeks the acceptance of the application without the signature of the inventor Ian P. Murray. Petitioner has been charged the petition fees to the Deposit Account No. 50-1752.

### **BACKGROUND**

In a decision from this Office on 29 September 2006, the petition filed under 37 CFR 1.47(b) on 11 September 2006 was dismissed. The decision indicated that items (2), (4) - (6) were not met.

On 30 July 2007, the USPTO mailed a "NOTIFICATION OF ABANDONMENT," which stated that applicant failed to respond to petition decision mailed 9/29/06.

On 21 July 2008, applicant submitted a "Renewed Petition Pursuant 37 CFR 1.47(b) and a petition under 37 CFR 1.137(b)" requesting reconsideration of the decision of 29 September 2006. The renewed petition includes, inter alia, a summary by Mr. Klinger and assignment papers.

### **DISCUSSION**

#### **37 CFR 1.47(b)**

A petition under 37 CFR 1.47(b) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Petitioner has satisfied items (1) – (3) and (5) – (6) but not item (4) of 37 CFR 1.47(a).

Regarding item (4), petitioner has still not provided an executed declaration signed by an appropriate officer of the company on behalf of the non-signing sole inventor, Mr. Murray.

Accordingly, it is not appropriate to accord the national stage application status under 37 CFR 1.47(b) at this time.

### **CONCLUSION**

The petition under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

### **37 CFR 1.137(b)**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

The petition is deemed to satisfy the items under 37 CFR 1.137(b).

Petitioner has provided: (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required. However, Petitioner has met requirement (1) because the reply is proper because applicant has submitted a renewed petition under 37 CFR 1.147(b).

The petition under 37 CFR 1.137(b) is **GRANTED**.

### **CONCLUSION**

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

The petition under 37 CFR 1.137(b) is **GRANTED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file the proper response will result in ABANDONMENT.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read 'R. Bacares', is positioned above the printed name.

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